

**INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY**

**TELECOMMUNICATIONS ACT 1999**

**INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY ACT 2016**

**ADVISORY GUIDELINES GOVERNING REQUESTS FOR DISPUTE  
RESOLUTION UNDER SUB-SECTION 12.5 OF THE CODE OF PRACTICE FOR  
COMPETITION IN THE PROVISION OF TELECOMMUNICATION AND MEDIA  
SERVICES 2022**

**8 NOVEMBER 2023**

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The Info-communications Media Development Authority of Singapore (“**IMDA**”), pursuant to Section 32 of the Telecommunications Act 1999 (“**Telecommunications Act**”) and Section 61 of the Info-communications Media Development Authority Act 2016 (“**IMDA Act**”), hereby issues these Advisory Guidelines (“**Guidelines**”) Governing Requests For Dispute Resolution Under Sub-section 12.5 of the Code of Practice for Competition in the Provision of Telecommunication and Media Services 2022 (“**Code**”).

**1. INTRODUCTION**

- 1.1 The provisions in these Guidelines are advisory and they do not impose any binding legal obligations on IMDA. These Guidelines set out the procedures and standards that IMDA will generally apply when resolving disputes under Sub-section 12.5 of the Code.
- 1.2 In order to provide a single document addressing all issues relevant to the procedures and standards for dispute resolution, certain provisions of the Code have been summarised or repeated in these Guidelines. For the avoidance of doubt, in the event of any conflict between the Code and these Guidelines, the provisions of the Code shall prevail.
- 1.3 These Guidelines are intended to address the situation where IMDA resolves disputes under Sub-section 12.5 of the Code arising between two Telecommunication Licensees and/or Regulated Persons. However, there may be cases where IMDA receives two or more petitions for dispute resolution which involve a common Telecommunication Licensee or Regulated Person, and similar subject matters. For example, disputes may arise between multiple Telecommunication Licensees or Regulated Persons seeking access to the same infrastructure controlled by a common Telecommunication Licensee or Regulated Person. In such cases, IMDA may, in its discretion, require all the Telecommunication Licensees or Regulated Persons to jointly participate in a consolidated dispute resolution proceeding in order to achieve a consistent and non-discriminatory outcome. In doing so, IMDA will, where appropriate, apply these Guidelines with suitable modification to accommodate the consolidated dispute resolution proceeding.
- 1.4 Except where a term is specifically defined in these Guidelines, capitalised terms used in these Guidelines shall have the same meaning as in the Code.

1.5 These Guidelines may be referred to as the “Dispute Resolution Guidelines”.

## **2. APPLICABLE PROVISIONS OF THE CODE**

2.1 Sub-section 12.5(a) of the Code provides that while all parties are encouraged to resolve disputes through good-faith commercial negotiations, IMDA will provide dispute resolution services at its discretion in connection with the following disputes:

- (a) disputes between Telecommunication Licensees arising from the implementation of an Interconnection Agreement entered into with a Dominant Telecommunication Licensee;
- (b) disputes arising from a Sharing Agreement entered into via IMDA’s dispute resolution for the sharing of Telecommunication Infrastructure or Media Resource that is owned or controlled by Telecommunication Licensees or Persons Controlling Media Resources (as the case may be);
- (c) disputes arising from a failure to reach an agreement regarding the prices, terms and conditions upon which the Lead Broadcaster will provide access to the “feed” of an event designated as an Event of National Significance pursuant to Sub-section 11.4.3.1.3 of the Code;
- (d) disputes arising out of the Free-to-Air Television Licensees’ and Subscription Television Licensees’ obligations pursuant to the “Mandated Shared Programmes” and “anti-hoarding” provisions specified in Sub-section 11.5 of the Code; or
- (e) disputes arising from a failure to reach a mutually acceptable cross-carriage agreement referred to in Sub-section 11.6.4 of the Code.

2.2 In addition, Sub-section 12.5(b) of the Code provides that notwithstanding Sub-section 12.5(a) of the Code, IMDA will also resolve upon request the following disputes:

- (a) pursuant to Sub-section 6.4.3 of the Code, disputes between Telecommunication Licensees arising from a failure to voluntarily reach an Individualised Interconnection Agreement with a Dominant Telecommunication Licensee; and
- (b) pursuant to Sub-section 7.6.2 of the Code, disputes arising from a failure to voluntarily reach a Sharing Agreement for the sharing of Telecommunication Infrastructure or Media Resource that is owned or controlled by Telecommunication Licensees or Persons Controlling

Media Resources (as the case may be) that IMDA has directed or designated to be shared.

### **3. PRELIMINARY PROCEDURES APPLICABLE TO DISPUTES UNDER SUB-SECTION 12.5(a) OF THE CODE**

3.1 The following preliminary procedures apply to a dispute resolution under Sub-section 12.5(a) of the Code:

- (a) The Telecommunication Licensee or Regulated Person that (i) is party to a dispute under Sub-section 12.5(a) of the Code; and (ii) wants to petition IMDA to resolve such dispute (“**Requesting Party**”) must submit to IMDA a written request for intervention (“**Request for Intervention**”), and provide a copy of the Request for Intervention to the other party to the dispute (“**Other Party**”) on the same day that the Request for Intervention is submitted to IMDA. IMDA will not consider any Request for Intervention unless the Requesting Party complies with this notification requirement;
- (b) In its Request for Intervention, the Requesting Party must provide evidence that it has attempted, in good faith, to resolve the dispute with the Other Party. Such evidence may include a summary of events or circumstances that led to the dispute, correspondences, dispute notices and minutes of meetings; and
- (c) The Other Party will have five days from the day on which the Request for Intervention is submitted to IMDA to provide its comments, if any, on why IMDA should not intervene to resolve the dispute (“**Comments**”). The Other Party must provide a copy of the Comments to the Requesting Party on the same day that the Comments are submitted to IMDA.

3.2 IMDA will consider whether it should intervene to resolve the dispute. IMDA will generally notify both parties of its decision within 30 days of receipt of the Requesting Party’s Request for Intervention as to whether IMDA will intervene or decline to resolve the dispute, as the case may be. Where IMDA decides to intervene to resolve the dispute, the Requesting Party must submit to IMDA its written petition for dispute resolution in accordance with paragraph 4.2 of these Guidelines, and IMDA will apply the procedures set out in paragraphs 4 to 6 of these Guidelines to resolve the dispute.

### **4. PROVISIONS APPLICABLE TO ALL DISPUTE RESOLUTION PROCEEDINGS**

4.1 The following procedures apply to dispute resolution under:

- (a) Sub-section 12.5(a) of the Code, in cases where IMDA has accepted the dispute for resolution; and
  - (b) Sub-section 12.5(b) of the Code.
- 4.2 Any Telecommunication Licensee or Regulated Person requesting IMDA to resolve its dispute with another party must submit to IMDA a written petition for dispute resolution (“**Petition for Dispute Resolution**”). For the avoidance of doubt, the Petition for Dispute Resolution is a separate document from the Request for Intervention mentioned under paragraph 3. The Telecommunication Licensee or Regulated Person submitting the Petition for Dispute Resolution shall be referred to as the “**Petitioning Party**” and the other party shall be referred to as the “**Responding Party**”. A copy of the Petition for Dispute Resolution must also be provided to the Responding Party on the same day that the Petition for Dispute Resolution is submitted to IMDA. The Petition for Dispute Resolution must describe, in detail, each issue on which the parties have reached agreement and each issue on which the parties have not reached agreement. The Petitioning Party’s position on each of the issues in dispute should be described in a separate paragraph.
- 4.3 The Responding Party will have 15 days from the day on which the Petition for Dispute Resolution is submitted to IMDA to submit a written response to the Petition for Dispute Resolution (“**Response**”). A copy of the Response must also be provided to the Petitioning Party on the same day that the Response is submitted to IMDA. For each point in the Petition for Dispute Resolution on which the Petitioning Party claims that the parties are in agreement, the Response must indicate whether the Responding Party agrees or disagrees. If the Responding Party disagrees, it must provide a statement of its position. For each point in the Petition for Dispute Resolution on which the Petitioning Party claims that the parties disagree, the Responding Party must provide a clear statement of the way in which its position differs from that of the Petitioning Party.
- 4.4 In appropriate cases, IMDA may provide the Petitioning Party an opportunity to reply in writing to the Response. In such cases, IMDA will allow the Responding Party a similar opportunity to submit a final written reply to IMDA. Each party will be given 15 days to submit its further reply.
- 4.5 Where a party demonstrates good cause, IMDA may grant a further extension of time of up to seven days for making its submissions. Any request for an extension of time must be made in writing to IMDA at least three days before the expiration of the specified period for which the party must submit its response. IMDA will seek to inform both the Petitioning Party and the Responding Party of its decision within two days of the date of receipt of the request for extension.

4.6 Following receipt of the Petition for Dispute Resolution and the Response, IMDA may choose to schedule a meeting (referred to in these Guidelines as the “**Settlement Conference**”) at any time after it receives the Response if IMDA is of the view that such Settlement Conference will be helpful in resolving the dispute in question. IMDA will notify both the Petitioning Party and the Responding Party if a Settlement Conference is to be convened. Representatives of both the Petitioning Party and the Responding Party are required to be present. During the Settlement Conference, IMDA will seek to identify each issue in dispute and, to the extent feasible, assist the parties in resolving all outstanding disputes.

4.7 Within five days after the day on which any Settlement Conference is held, the parties must submit to IMDA a joint statement identifying and fully describing any issue on which the parties have either:

- (a) reached an agreement; or
- (b) modified their initial positions (each party can draft their respective portions of this section of the joint statement separately).

Save for this joint statement, the parties will not be permitted to submit any further statements, responses or representations after the conclusion of the Settlement Conference.

4.8 IMDA will apply the following standards to resolve the dispute:

- (a) Provided that they are consistent with the provisions of the Telecommunications Act and/or the IMDA Act (as the case may be), the Code and the conditions of the parties’ licences, IMDA will not re-open any issue on which the parties have reached agreement. Rather, the dispute resolution will be limited to those issues on which the parties are unable to reach agreement; and
- (b) To the extent that an issue in dispute is addressed by a provision of the Code, IMDA will apply that provision. To the extent that an issue in dispute is not addressed by any provision of the Code, IMDA retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by the parties); in such cases, IMDA is not obliged to confine its considerations to the specific arguments submitted by each party to IMDA.

4.9 Where appropriate, IMDA may impose an interim solution on the parties pending conclusion of the dispute resolution proceeding. Where feasible, IMDA will give the parties reasonable advance notice of the proposed interim solution. Any interim solution will be no more extensive than is necessary to avoid serious harm to either of the parties or to the public interest. The interim solution

will only be in effect up to and until the conclusion of the dispute resolution proceeding.

- 4.10 IMDA will generally complete the dispute resolution proceeding and issue a decision resolving each of the unresolved issues and specifying any further actions that the parties must take, within 60 days of receiving all necessary information, including the joint statement referred to in paragraph 4.7 above. Where appropriate, IMDA may, by written notice to the parties before the expiration of the 60-day period, extend the time by which IMDA will issue its decision.

## **5. SUBMISSION OF INFORMATION TO IMDA**

- 5.1 IMDA may request either or both parties to submit additional information at any time during the course of a dispute resolution proceeding initiated under paragraphs 3 and 4 above. Unless a party requests confidential treatment of information pursuant to Sub-section 12.9 of the Code, any submission by a party must be made available to the other party at the time it is submitted to IMDA.
- 5.2 Where a party wishes to submit confidential information to IMDA in connection with a dispute resolution proceeding, that party may request IMDA for confidential treatment of such information pursuant to Sub-section 12.9 of the Code.

## **6. BINDING EFFECT OF INITIAL SUBMISSIONS**

- 6.1 Consistent with the requirements of Sub-section 12.7 of the Code, any party that submits a Petition for Dispute Resolution or Response, must in its initial submission to IMDA, raise all relevant issues in dispute and submit all relevant information to substantiate that party's position taken on the issues in dispute.
- 6.2 In addition, IMDA reserves the right to reject the relevant portion of any subsequent submission made by the party in the course of the relevant proceeding that:
- (a) raises any new issue in dispute not previously disclosed in its initial submission of the Petition for Dispute Resolution or Response, which could have been raised in such initial submission, and the party cannot demonstrate that it had good cause for failing to do so;
  - (b) contains information that could have been submitted in its initial submission of the Petition for Dispute Resolution or Response; or
  - (c) takes any position that is inconsistent with its initial submission of the Petition for Dispute Resolution or Response.